

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

T.K. by his parents and next friends,)	
THOMAS and SANDRA KOSITZKY)	
Plaintiffs,)	
)	
v.)	CAUSE NO. 2:08-CV-224-JTM-PRC
)	
HANOVER COMMUNITY SCHOOL)	
CORP.,)	
Defendant.)	

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE PURSUANT TO
28 U.S.C. § 636(b)(1)(B)**

This matter is before the Court on a Motion to Reopen Case, in letter form [DE 17], filed by Thomas Kositzsky, on behalf of Plaintiff T.K. (a minor), on October 21, 2008, a Motion to Withdraw [DE 19], filed by attorney Dorene Philpot on October 22, 2008, and an Oral Motion to Dismiss Complaint without Prejudice, made by Plaintiffs on November 17, 2008. On October 8, 2008, Plaintiffs, by counsel, filed a Motion to Dismiss the Complaint without Prejudice. In the Motion, Plaintiffs' counsel represented that Plaintiffs were no longer willing to "spend their time and resources on litigation but want to focus their time and money on getting their son what he needs in order to thrive in this world . . . [t]his is the reason they are filing their motion to dismiss without prejudice." On October 21, 2008, Thomas Kositzky filed a letter with the Court claiming that Plaintiffs' attorney filed the Motion to Dismiss without their consent. Mr. Kositzky also requested that the case be reopened. The Court construed the letter as a Motion to Reopen the case.

On October 22, 2008, Plaintiffs' counsel filed a Motion to Withdraw as Attorney [DE 19], purporting that there has been a serious breakdown in the attorney-client relationship.

On October 24, 2008, Senior District Court Judge James T. Moody entered an Order [DE

20] referring this matter to the undersigned Magistrate Judge for a report and recommendation on the instant motions pursuant to 28 U.S.C. § 636(b)(1)(B) & (C), Fed. R. Civ. P. 72(b) and Local Rule 72.1(d). On October 28, 2008, the Court issued an Order taking both Motions under advisement and setting this matter for hearing on November 17, 2008, before the undersigned Magistrate Judge. This Report constitutes the undersigned Magistrate Judge's combined proposed findings and recommendations pursuant to 636(b)(1)(B) & (C), Fed. R. Civ. P. 72(b) and Local Rule 72.1(d). For the following reasons, the Court recommends that the District Court grant the motions.

At the November 17, 2008 Hearing, Thomas Kositzky, Plaintiff T.K.'s parent and next friend, appeared and indicated in open court that he did not object to the Court allowing Attorney Philpot to withdraw as counsel. Further, Mr. Kositzky requested that the case be reopened. Later, however, Mr. Kositzky made an oral motion on behalf of Plaintiff T.K. to dismiss the complaint.

Based on the foregoing, the Court **RECOMMENDS** that the District Court **GRANT** the Motion to Withdraw [DE 19], the Motion to Reopen Case, in letter form [DE 17], and the Oral Motion to Dismiss the Complaint Without Prejudice.

This Report and Recommendation is submitted pursuant to 28 U.S.C. § 636(b)(1)(B) & (C), Fed. R. Civ. P. 72(b) and Local Rule 72.1(d). Pursuant to 28 U.S.C. § 636(b)(1), the parties shall have ten (10) days after being served with a copy of this Recommendation to file written objections thereto with the Clerk of Court. The failure to file a timely objection will result in waiver of the right to challenge this Recommendation before either the District Court or the Court of Appeals. *Willis v. Caterpillar, Inc.*, 199 F.3d 902, 904 (7th Cir. 1999); *Hunger v. Leininger*, 15 F.3d 664, 668 (7th Cir. 1994); *The Provident Bank v. Manor Steel Corp.*, 882 F.2d 258, 260-261 (7th Cir. 1989); *Lebovitz v. Miller*, 856 F.2d 902, 905 n.2 (7th Cir. 1988).

SO ORDERED this 17th day of November, 2008.

s/ Paul R. Cherry
MAGISTRATE JUDGE PAUL R. CHERRY
UNITED STATES DISTRICT COURT

cc: All counsel of record
Thomas and Sandra Kositzky
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